City of Lafayette
Special Meeting of the
Lafayette City Council

MINUTES

Lafayette City Offices **September 1, 2009**
3675 Mt. Diablo Blvd., Suite #265
Lafayette, California

1. CALL TO ORDER

Mayor Tatzin called the meeting to order at 8:43 a.m.

2. ROLL CALL

Present: City Council: Mayor Tatzin, Vice Mayor Andersson Councilmember's Federighi

Absent: Councilmembers Anderson and Anduri

Staff: Steven Falk, City Manager; Tony Coe, Engineering Services Manager; Matt Luttropp, Associate Engineer; Mala Subramanian, City Attorney; Joanne Robbins, City Clerk

3. ADOPTION OF AGENDA

ACTION: It was M/S/C (Federighi/Andersson) to adopt the agenda. Vote: 3-0-2 (Ayes: Tatzin, Andersson, Federighi; Noes: None; Absent: Anduri, Anderson).

4. PUBLIC COMMENTS – None

5. STAFF REPORT

Matt Luttropp Associate Engineer
Stanley Boulevard Traffic Calming and Sidewalk Project, Project Number 014-9678, Low Bidder Responsibility Hearing and Award of Contract.
Recommendation: Discuss and direct staff

Associate Engineer Matt Luttropp said he would like to thank everyone for being here this morning and reviewed the Stanley Boulevard Traffic Calming and Sidewalk Project.

Mr. Luttropp stated there were four bids for this project, Cinray Construction was the lowest bidder at $81,396 and a little under the engineer's estimate, however, staff recommends that the lowest bidder be found not responsible and seeks City Council action to find Cinray Construction the apparent low bidder not responsible, reject this bid and award this contract to the next lowest bidder J.A. Gonsalves in the amount of $110,716.00.

Mr. Luttropp said based on his first hand experience in observing Cinray Construction's performance on Phase II of the Stanley Boulevard Traffic Calming project, Reynaldo Tagle and Cinray Construction do not

possess the competency in project management and workmanship required to successfully perform the work required on the Stanley Boulevard Traffic Calming and Sidewalk Project Number 014-9678.

Mr. Luttropp said we received two labor complaints against the contractor where workers stated they weren't being paid for certain days, or were not being paid the mandated minimum wage rates required by the project. Staff found errors in the certified payroll records with wage rates that the contractor was reporting and at this time they have yet to be corrected or resolved by the contractor.

Mr. Luttropp reported that during the last phase of work he found the contractor consistently had difficulty implementing the improvements in compliance with the project plans and specifications.

The City received a Stop Notice filed against the contractor in the amount of $12,000.00 due to failure to pay a material supplier. At this time no explanation has been given as to how this debt will be resolved.

Mr. Luttropp stated that during the striping phase of this contract staff repeatedly told the contractor, Reynaldo Tagle, he could not replace a listed subcontractor with another contractor. Despite this information he went ahead and tried to replace a subcontractor violating public contract code. During the course of the project the City received cancellation notices from the Contractors Liability Insurance as well as State Workers Compensation both of those were ultimately resolved without a lapse in coverage.

Mr. Luttropp said if you take all of this information collectively it tends to indicate that the contractor is deficient in management skills, construction workmanship and possibly financial resources along with compliance with applicable codes and laws. As such staff feels this does not appear to be in the public's best interests to award a contract to such a firm. Staff recommends a finding of non responsibility and rejection of the apparent low bidder Cinray Construction.

Mayor Tazin asked if there is a legal standard for non responsibility. City Attorney, Mala Subramanian stated there is not if someone were to challenge your decision as arbitrary and capricious, we feel very comfortable with what staff has laid out.

Reynaldo Tagle of Cinray Construction arrives (8:43 a.m.) and apologizes for being late.

Mr. Luttropp informed Mr. Tagle that he had just reviewed the staff report with the mayor and council and explained to the council the basis for the rejection.

City Attorney, Mala Subramanian informed Mr. Tagle that she was just explaining to Mayor Tatzin what the standards of the court would look at whether the City actions were arbitrary or capricious and we believe there are sufficient grounds based on the staff report for the City to make that determination.

Mr. Tagle stated he read the report and that they did their best on the last project and pretty much knew exactly what was going to happen here today.

Mr. Tagle said they had done everything that the City asked, as far as what was planned and any changes. Mr. Tagle stated there was a delay at the end but that was beyond his control. He said, "I messed up the part of not notifying the city way ahead. I don't even pay attention. As for the sub contractors they were on my bid proposal, they were included as a subcontractor. As respect to Matt here he is a good engineer, I worked with him, other than we had to do it the right way, I agree, if we had to take it out because it was not acceptable we did, even though it cost me in the end. I had to swallow it, it's not really a failure but I have so many things but it's not an excuse, I understand, I respect your decision and that's just fine, I'll find another project we are good at. Thank you for the opportunity."

Mayor Tatzin asked for discussion. Carol Federighi stated based on the information that Mr. Luttropp provided and the contractors not really finding fault with the information, she would move the staff recommendation.

Mayor Tatzin, then addressed Mr. Tagle and thanked him for bidding on the first project and getting that. He stated that the City does not take this type of action frequently or lightly. He advised Cinray to be more cognizant of the requirements of performing a public contract, and invited Cinray to bid on a future project that would be more suitable or appropriate to its capacity because this action is not a permanent rejection.

Councilmember Federighi agreed it is not. Mr. Tagle responded that this is his 4th project. He stated that he'd "take it as it is" and he would have to do better.

ACTION: It was M/S/C (Federighi/Andersson) to find Cinray Construction non-responsible and reject the bid for the project. Vote: 3-0-2 (Ayes: Tatzin, Federighi, Andersson; Noes: None; Absent: Anderson, Anduri).

Mayor Tatzin questioned the second staff recommendation that the City award the bid to the second lowest bidder. Mayor Tatzin asked about the option of just re-bidding, because of the difference in price between the lowest bidder and the second lowest bidder and the difference in price between the engineer's estimate and the bid. He wondered if there is a possibility that other bidders looking at this assumed that Cinray would be the logical choice for the next round, and just threw in bids just to see what would happen.

Mr. Luttropp stated that it's possible, but he is concerned that rebidding would push the project much further out. The neighborhood desperately wants the sidewalk portion especially at Warner Court completed as soon as possible. That's the urgency associated with this project.

Mayor Tatzin asks if the work could be phased. Mr. Luttropp imagines that the sidewalk and retaining wall would be part of the first phase, separate from the traffic calming features. Mayor Tatzin then asked if we were to break it out, whether it would be small enough that we could negotiate with contractors.

Mr. Luttropp believes we could contact the three contractors and ask them for prices and select the lowest. Mr. Coe, Engineering Services Manager, said that it has to be under $30,000.00 and the other complication is that we received a grant in the order of $65,000.00 so it would be difficult to break up the grant.

Mayor Tatzin asked if we would have to reject all the bids and send it back out? Mr. Coe states that the engineer's estimates were based on prices that we saw back in the spring and now every City or County has stimulus money that has or is going to hit the street. So there is no guarantee that we would get a lower price.

ACTION: It was M/S/C (Federighi/Andersson) to adopt the project plans, specifications, and project detail to conform to the Uniform Construction Accounting Act, and award the contract to second low bidder, J.A. Gonsalves in the amount of $110,716.00. Vote: 3-0-2 (Ayes: Tatzin, Andersson, Federighi; Noes: None; Absent: Anderson, Anduri).

ADJOURMENT: Meeting was adjourned at 8:50 a.m.

ATTEST: APPROVED:

_____ _____

Joanne Robbins, City Clerk Don Tatzin, Mayor